



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2020-0520; FRL-9142-01-OGC]

Proposed Stipulated Partial Settlement Agreement, Endangered Species Act Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed stipulated partial settlement agreement; request for public comment.

SUMMARY: In accordance with the Environmental Protection Agency (EPA) Administrator's October 16, 2017, Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements, notice is hereby given of a proposed stipulated partial settlement agreement in the case of *Natural Resources Defense Council v. Wheeler, et al.*, in the United States District Court for the District of Columbia (1:17-CV-02034). The Plaintiff filed its original case on October 3, 2017, alleging that EPA violated the Endangered Species Act (ESA) by failing to consult on the effects to listed species of certain pesticide product registrations containing one of three pesticide active ingredients—acetamiprid (Claim One), dinotefuran (Claim Two), and imidacloprid (Claim Three). EPA and the Natural Resources Defense Council (NRDC) are proposing to resolve this case through a stipulated partial settlement agreement. Defendant-Intervenor takes no position on this agreement.

DATES: Written comments on the proposed stipulated partial settlement agreement must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2020-0520, online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action.

Comments received may be posted without change to <https://www.regulations.gov>, including any

personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Additional Information about Commenting on the Proposed Settlement Agreement” heading under the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be a delay in processing mail and faxes. Hand-deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

EPA continues to carefully and continuously monitor information from the CDC, local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID-19.

FOR FURTHER INFORMATION CONTACT: Michele Knorr, Pesticides and Toxic Substances Law Office MC-2333A, Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone (202) 564-5631; email address knorr.michele@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Settlement Agreement

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2020-0520) contains a copy of the proposed settlement agreement.

The electronic version of the public docket for this action contains a copy of the proposed settlement agreement and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are

available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

II. Additional Information about the Proposed Settlement Agreement

On October 3, 2017, Plaintiff (a non-governmental environmental organization) filed a complaint in the United States District Court in the District of Columbia asserting three claims against EPA for allegedly violating section 7(a)(2) of the ESA by failing to initiate and reinstate consultation with the Services. Specifically, Plaintiffs alleged that the EPA failed to consult on the effects to listed species of 95 pesticide product registrations containing one of three pesticide active ingredients—acetamiprid (Claim One), dinotefuran (Claim Two), and imidacloprid (Claim Three). The Court approved, in February 2018, a stipulation of partial dismissal of many products, leaving 59 pesticide product registrations at issue. In January 2021, Plaintiff and EPA reached a stipulated partial settlement agreement in this case where EPA agreed to complete ESA section 7(a)(2) effects determination, compiled into a biological evaluation, for imidacloprid by June 30, 2022, and, as appropriate, request initiation of any ESA section 7(a)(2) consultation with the Services.

After the entry of the stipulated partial settlement agreement for imidacloprid, the parties filed summary judgment motions and cross motions on the remaining claims. Shortly after these filings, the parties began settlement discussions on these remaining claims. The stipulated partial settlement agreement for which EPA is taking comment addresses these two claims. Specially, Paragraph 1 of the stipulated partial settlement agreement states that EPA will by October 2024 complete effects determinations and request initiation of any necessary ESA consultation pursuant to 50 CFR part 402 regarding the potential effects of acetamiprid and dinotefuran on any and all listed species and designated critical habitat.

Consistent with current practice, the agreement would also include statements of EPA’s intent to take certain actions in addition to the deadlines associated with specific biological evaluations, including: (1) to complete the draft biological evaluations no later than one year

prior to the deadline for the final biological evaluations, as well as to provide notice and a 60-day opportunity for public comment on any such draft, and (2) conduct the effects determinations on a nationwide-scale. Defendant-Intervenor takes no position on this agreement.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed stipulated partial settlement agreement from persons who are not named as parties to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed stipulated partial settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the ESA or the Federal Insecticide, Fungicide, and Rodenticide Act. Unless EPA or the Department of Justice determines that consent should be withdrawn, the terms of the proposed stipulation and stipulated notice of dismissal will be affirmed.

III. Additional Information about Commenting on the Proposed Settlement Agreement

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2020-0520, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about

submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Christopher E. Kaczmarek,

Acting Associate General Counsel.